



[Billing Code 1610-02-P]

GOVERNMENT ACCOUNTABILITY OFFICE

Debarment, Suspension, and Ineligibility of Contractors

AGENCY: Government Accountability Office.

ACTION: Policy statement.

SUMMARY: On September 30, 2011, the Government Accountability Office (GAO) provided notice of its proposed policy to adopt the policies and procedures contained in the Federal Acquisition Regulation (FAR) regarding the debarment, suspension, and ineligibility of government contractors. Comments on GAO's policy were due on or before November 14, 2011. GAO received two comments. Both comments expressed support for GAO's efforts to adopt policies and procedures regarding the debarment, suspension, and ineligibility of government contractors. Neither comment suggested any changes to GAO's policy statement. GAO is adopting, with minor changes, the policy statement published in the Federal Register on September 30, as set forth below.

As a legislative branch agency, GAO is not subject to the requirements of the FAR. However, it is GAO's general policy to follow the FAR, as appropriate and applicable. Mandatory application of the FAR is not to be inferred from GAO's adoption of this policy. Further, GAO's procurement rules are not contained in the Code of Federal Regulations, but instead are contained in an internal GAO document referred to as "Government Accountability Office Procurement Guidelines" (hereinafter, GAO's Procurement Order). As such, GAO's policy regarding debarment and suspension will be added as a chapter to GAO's Procurement Order.

DATE: This policy is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Questions concerning this policy can be addressed to Government Accountability Office, Office of the General Counsel, Attn: Legal Services, Room 7838, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: John A. Bielec, Assistant General Counsel, 202-512-2846 or e-mail, bielecj@gao.gov.

SUPPLEMENTARY INFORMATION: Under GAO's policy, GAO will follow FAR Subpart 9.4. GAO's Procurement Order, GAO Order 0625.1, states that it is GAO's policy to follow the FAR and GAO has long-maintained procedures, consistent with FAR Subpart 9.4, that ensure that it contracts only with those entities and individuals (hereinafter, contractors) who are responsible. However, GAO's Procurement Order does not explicitly reference the debarment and suspension procedures contained in FAR Subpart 9.4. To make clear that FAR Subpart 9.4 applies, GAO will amend its Procurement Order to formally and explicitly adopt FAR Subpart 9.4.

Except as provided in FAR Subpart 9.4, GAO will not solicit offers from, award contracts to, or consent to subcontracts with, contractors who are listed on the Excluded Parties List System (EPLS), which is maintained by the General Services Administration. Further, if GAO debars, proposes for debarment, or suspends a contractor, GAO will, consistent with FAR Subpart 9.4, list that contractor in the EPLS. Given that GAO is a legislative branch agency, the listing of a contractor in the EPLS by GAO will have mandatory effect only as to

GAO. Consistent with FAR 9.405-1, GAO may continue an existing contract with a contractor who is later debarred, proposed for debarment, or suspended.

Consistent with the definitions of “debarring official” and “suspending official” contained at FAR 9.403, the Comptroller General, as the head of GAO, will serve as the debarring official and suspending official (hereinafter, debarment/suspension official). The Comptroller General may designate another GAO official to serve as the debarment/suspension official. The Comptroller General will also be responsible for deciding whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment, and whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

GAO’s Acquisition Management office (AM), which is responsible for the majority of GAO’s contracting activities, will be the GAO unit with primary responsibility for investigating and referring potential debarment and suspension actions to the debarment/suspension official for his or her consideration. GAO’s procurement activities are largely centralized in AM, which is staffed by contracting officers and other acquisition professionals. As such, AM staff has the required technical knowledge to handle debarment and suspension referrals and is in the best position to learn of matters that may warrant debarment and/or suspension. Moreover, AM is the first point of contact for Contracting Officers’ Representatives, who have direct knowledge of any problems with contractor performance. Thus, individuals—including GAO employees and members of the public—who believe that there may be grounds to debar or suspend a contractor

should contact AM and provide them with all relevant information. Whenever AM learns of information that indicates there may be grounds for debarment or suspending a contractor, AM will gather appropriate information and refer the matter to the debarment/suspension official. All such referrals will include a recommendation by the Director of AM as to a proposed course of action. Likewise, AM will have responsibility for recommending to the Comptroller General whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment.

Given its central role in GAO's procurement process, AM, in consultation with GAO's Office of General Counsel, will also be responsible for establishing written procedures that address the key aspects of GAO's debarment/suspension program.

Accordingly, the Government Accountability Office has adopted the following policy and will incorporate it into GAO's Procurement Order:

GAO will follow the policies and procedures contained at FAR Subpart 9.4--Debarment, Suspension, and Ineligibility. GAO will not solicit offers from, award contracts to, or consent to subcontracts with contractors who are listed on the Excluded Parties List System (EPLS), except as otherwise provided for in FAR Subpart 9.4. GAO will report to the EPLS any contractor GAO debars, suspends, or proposes for debarment. Such action will have mandatory application only to GAO. Notwithstanding the debarment, suspension, or proposed debarment of a contractor, GAO may continue contracts or

subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment, unless the Comptroller General (CG) directs otherwise.

The CG or a designee will serve as the debarring official and suspending official (debarment/suspension official). The CG will also decide whether to solicit offers from, award contracts to, or consent to subcontracts with contractors who have been debarred, suspended, or proposed for debarment and whether to terminate a current contract or subcontract in existence at the time the contractor was debarred, suspended, or proposed for debarment.

Acquisition Management (AM) will have primary responsibility for investigating and referring potential debarment/suspension actions to the debarment/suspension official for consideration. As such, any person who believes that there may be grounds to debar or suspend a person or entity from contracting with GAO should contact AM and provide them with all relevant information. AM will also have responsibility for recommending to the CG whether or not to continue current contracts with, solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment.

In consultation with the Office of General Counsel, AM will establish and maintain written procedures for:

- (1) The prompt reporting, investigation, and referral to the debarment/suspension official of matters appropriate for that official's consideration. All debarment/suspension referrals shall include a recommendation by the Director of AM as to a proposed course of action;

- (2) The debarment decisionmaking process, which shall afford the contractor (and any specifically named affiliates) an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment;
- (3) The suspension decisionmaking process, which shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension;
- (4) Recommending to the CG whether or not to solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment; and
- (5) Recommending to the CG whether or not to continue current contracts with a contractor or subcontractor who is debarred, suspended, or proposed for debarment.

OGC will review for legal sufficiency:

- (1) Referrals by AM to the debarment/suspension official;
- (2) Recommendations by AM to the CG that GAO solicit offers from, award contracts to, or consent to subcontracts with a contractor who is debarred, suspended, or proposed for debarment;
- (3) Recommendations by AM to the CG to terminate a current contract because a contractor or subcontractor was subsequently debarred, suspended, or proposed for debarment; and

- (4) Notices of proposed debarment, notices of suspension, or any other communication to a contractor regarding that contractor's potential or actual suspension or debarment.

Lynn H. Gibson,
General Counsel,
U.S. Government Accountability Office.

[FR Doc. 2012-3307 Filed 02/10/2012 at 8:45 am; Publication Date:
02/13/2012]